

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Rail Passenger Corporation (AMTRAK):

Claim on behalf of Mr. Richard J. Morris, Boston Commuter Division, Employee #025-62-5916, currently consigned, since October 1988, to the position of Signal Trainee in Crew #R082 with a headquarter point of 56 Roland Street, Charlestown, Massachusetts 02129. His Hours of Service are Monday thru Friday: 7:30 a.m. to 4:00 p.m. at the hourly rate of \$11.23 per hour.

(a) Carrier violated the current agreement between the National Railroad Passenger Corporation and the BofRS-Southern & Western Districts, dated 1 February 1987, Rule #30, paragraphs (a) and (b) when it permitted and/or required another non-related crew employee to work in place of Mr. Morris, to which he had first entitlements in accordance with contractual obligations.

(b) Carrier should now be required to compensate Mr. Morris for twenty-five (25) hours at one and one-half times his normal aforementioned rate." Carrier file NEC-BRS-SD-374. BRS Case No. 8072-CR.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant in this dispute is a Signal Trainee in Signal Crew No. R082. Claimant is headquartered at 56 Roland Street, in Charlestown, Massachusetts. His regular assigned hours are Monday through Friday from 7:30 A.M. to 4:00 P.M.

Claimant maintains that on Friday, February 3, 1989, he informed his superiors that he would be available for overtime service on the Oak Island/Saugus Drawbridge Project over the weekend. The Claimant further stated that he was advised his service would not be needed. On the following Monday, February 6, 1989, however, Claimant discovered that a Signalman from Crew No. R192, worked with Claimant's Crew No. R082.

In a letter of March 25, 1989, the General Chairman filed a claim on behalf of Claimant contending a violation of Rules 30 (a) and (b).

"RULE 30

OVERTIME PREFERENCE - CONTINUOUS
WITH TOUR OF DUTY

(a) When it is known in advance of the end of a tour of duty that a portion of a gang is to be worked on a subsequent tour of duty (not a part of their regular assignment) or continuous with the current tour of duty, those with the greatest seniority in the class who were actually performing the work prior to the overtime will be given the first opportunity for the overtime.

(b) If additional employees are required for such overtime, other qualified employees in the gang will be offered the overtime in seniority order."

It is the Organization's position that the Carrier violated the Agreement, specifically Rule 30 (a) and (b), when it did not use the Claimant for overtime on Saturday, February 4, and Sunday, February 5, 1989, on the Oak Island/Saugus Drawbridge Project. For this violation, the Organization feels the Carrier should now be required to pay Claimant compensation equal to twenty-five hours pay at his punitive rate of pay.

According to the Organization, there is no argument between the parties that the overtime was worked; that the Claimant was available; and that the hours cited were correct. The Organization maintains that the only argument of the Carrier is that the Claimant was "unqualified for the work." The Organization stated in the original claim letter that the Claimant was qualified under the Carrier's "Gang Watchman" Rules and the NORAC Rules.

For its part, the Carrier asserted the following facts: At the time the disputed overtime work was performed, the Claimant was assigned to Crew R082 as a Signal Trainee with less than six months service. The Division Engineer stated that while the Signalmen may have performed some incidental "flagging and bonding" in connection with their work that weekend, it was by

no means a preponderance of the work they performed and a "fully qualified" Signalman was needed. The Carrier further stated that the Signalman called replaced circuit controller boxes on the bridge deck on that weekend. The work involves actually rewiring signals, a position for which the Claimant, a Signal Trainee, is not qualified according to the Carrier. For this reason the Carrier assigned the senior Signalman from Crew No. R192.

This Board has a restrictive appellate role in the resolution of disputes. Our jurisdiction does not include the finding of facts which are not clearly presented to the Board by written record evidence set forth in the handling on the property. The facts essential to this claim are sharply disputed and a review of the record and correspondence exchanged on the issue does not contain sufficient probative evidence to support either the Carrier's or the Organization's position regarding exactly what work was performed by the Signalman.

When irreconcilable differences occur in material facts, such claims have traditionally been dismissed by this Board. See Third Division Awards 28435, 27195, 26679, and 25973. We have no sufficient evidentiary basis for resolving this dispute and, accordingly, we have no choice but to dismiss it for failure of proof.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1992.